

Investment Management & Funds Regulatory Update - January 2024

January 31, 2024 | Client Update | 3-minute read

In this issue, we discuss SEC Chair Gary Gensler's statement regarding the recent approval of spot bitcoin exchange-traded products.

Rules and regulations

SEC adopts final SPAC rules

On January 24, 2024, the SEC, in a 3-2 vote, adopted final rules that mandate expanded disclosures and other obligations with respect to initial public offerings by SPACs and subsequent de-SPAC transactions. The SEC backpedaled on its proposed rules that would have expanded the scope of underwriter liability and would have included a new safe harbor under the Investment Company Act of 1940. But the final rules do follow through on imposing disclosure requirements for sponsor compensation, conflicts of interest, dilution and projections – in a way that, in our view, largely codifies current market practice in SPAC IPOs and de-SPAC transactions. Please see our recent [client update](#) on this topic.

Industry update

Chair Gary Gensler releases statement on the approval of spot bitcoin exchange-traded products

On January 10, 2024, SEC Chair Gary Gensler released a [statement](#) regarding the SEC's recent approval of spot bitcoin exchange-traded products (ETPs).

In his statement, Chair Gensler stressed that the SEC's approval is “cabined to ETPs holding one non-security commodity, bitcoin” and that such approval “should in no way signal the [SEC]'s willingness to approve listing standards for crypto asset securities” or “the [SEC]'s views as to the status of other crypto assets under the federal securities laws or about the current state of non-compliance of certain crypto asset market participants with the federal securities laws.” Gensler stated that in his view, “the vast majority of crypto assets are investment contracts and thus subject to the federal securities laws.”

Chair Gensler went on to highlight that the SEC's approval of bitcoin ETPs provided investor protection benefits, including:

- **Disclosure:** Sponsors of bitcoin ETPs will be required to provide “full, fair, and truthful disclosures” and investors will benefit from disclosures included in public registration statements and periodic filings.

- **Exchange rules:** Bitcoin ETPs will be listed and traded on registered national securities exchanges which have rules designed to prevent fraud and manipulation, to address certain conflicts of interest, and to protect investors and the public interest. Chair Gensler noted that the SEC will monitor the exchanges closely to ensure that such rules are being enforced.

Chair Gensler also noted that existing rules and standards of conduct will apply to the purchase and sale of approved ETPs, such as Regulation Best Interest when broker-dealers recommend ETPs to retail investors, and fiduciary duties under the Investment Advisers Act for investment advisers. But he emphasized that the SEC's approval of bitcoin ETPs "does not approve or endorse crypto trading platforms or intermediaries, which, for the most part, are non-compliant with the federal securities laws and often have conflicts of interest."

- **Fairness and competition:** Chair Gensler noted that SEC staff are reviewing registration statements for 10 bitcoin ETPs simultaneously, which will create a "level playing field" for issuers and promote fairness and competition, benefiting investors and the broader market.

Chair Gensler concluded his statement by contrasting bitcoin ETPs with spot non-security commodity ETPs, such as those holding certain precious metals. He noted that metals ETPs have consumer and industrial uses, while, in contrast, bitcoin is "primarily a speculative, volatile asset that's also used for illicit activity including ransomware, money laundering, sanction evasion, and terrorist financing." Chair Gensler ended his statement by warning investors to "remain cautious about the myriad risks associated with bitcoin and products whose value is tied to crypto."

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

James H.R. Windels

+1 212 450 4978
james.windels@davispolk.com

Leor Landa

+1 212 450 6160
leor.landa@davispolk.com

Gregory S. Rowland

+1 212 450 4930
gregory.rowland@davispolk.com

Michael S. Hong

+1 212 450 4048
michael.hong@davispolk.com

Lee Hochbaum

+1 212 450 4736
lee.hochbaum@davispolk.com

Sijia Cai

+1 212 450 3071
sijia.cai@davispolk.com

Jennifer Grant Cooper

+1 212 450 4492
jennifer.cooper@davispolk.com

Sarah E. Kim

+1 212 450 4408
sarah.e.kim@davispolk.com

Marc J. Tobak

+1 212 450 3073
marc.tobak@davispolk.com

Benjamin Milder

+1 212 450 3171
benjamin.milder@davispolk.com

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